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NOTIFICATION PROCEDURE

1. The Notification Procedure Shall Be Used When:

a. A probationary Regular officer, a probationary Reserve officer above CWO-5 with fewer than 5 years of commissioned service, or a permanent Regular or Reserve warrant officer with fewer than 3 or 5 years of service, respectively, as a warrant officer is processed for separation for any reason specified in paragraph 1 of enclosure (3).

b. Action is taken to terminate the appointment of a Temporary LDO or warrant officer for any reason specified in paragraph 1 of enclosure (3).

c. Action is taken to remove a Reserve officer from an active status under the provisions of paragraph 13 of enclosure (3).

d. Action is taken to process a Regular or Reserve officer for separation for the reason specified in paragraph 5 (Failure to Accept Appointment to O-2) of enclosure (3).

2. Notification by Commanding Officer. The commanding officer shall notify the officer in writing of the following:

a. The reason or reasons specified in enclosure (3) for which the action was initiated, including the specific factual basis supporting the reason.

b. The recommended characterization of service is Honorable or General (Under Honorable Conditions) if such a recommendation originated with CHNAVPERS or DC/S (M&RA).

c. That the officer may submit a rebuttal or decline to make a statement.

d. That the officer may tender a resignation in lieu of separation processing in accordance with subparagraph 11a of enclosure (4).

e. That the officer has the right to confer with appointed counsel as provided in paragraph 3 of this enclosure.

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f. That the officer will, upon request, be provided copies of the papers to be forwarded to the Secretary to support the proposed separation. Classified documents may be summarized.

g. That the officer has the right to waive subparagraphs c, d, e, and f, and that failure to respond shall constitute waiver of the rights in these subparagraphs.

h. That the officer has a specified period of time to respond to the notification as provided in paragraph 4.

3. Right to Counsel

a. A respondent has the right to consult with qualified counsel when the Notification Procedure is initiated, except under the following circumstances:

(1) The respondent is attached to a vessel or unit operating away from or deployed outside the United States or away from its overseas home port, or to a shore activity remote from Judge Advocate resources;

(2) No qualified counsel is assigned and present at the vessel, unit, or activity;

(3) The commanding officer does not anticipate having access to qualified counsel from another vessel, unit, or activity, for at least the next 5 days; and

(4) The commanding officer determines that the needs of the Naval Service require processing before qualified counsel will be available.

b. Nonlawyer counsel shall be appointed whenever qualified counsel is not available under paragraph 3a. An appointed nonlawyer counsel shall be a commissioned officer with no prior involvement in the circumstances leading to the basis of the proposed separation, and no involvement in the separation process itself. The nonlawyer counsel shall be encouraged to seek advice by telephone or other means from any judge advocate on any legal issue relevant to the case whenever practicable. When a nonlawyer counsel is appointed, the appointing letter shall state that qualified counsel is unavailable for the applicable reasons

in paragraph 3a of this enclosure and that the needs of the Naval Service warrant processing before qualified counsel will be available; a copy of the appointing letter will be attached to each copy of the written notice of separation processing. The respondent may also consult with a civilian counsel at the respondent's own expense. Respondent's use of a civilian counsel does not eliminate the requirement to furnish counsel in paragraph 3a or 3b of this enclosure. Consultation with civilian counsel shall not delay orderly processing per this instruction.

4. Response

a. The respondent shall be provided a reasonable period of time, normally 5 working days, but more if in the judgment of the commanding officer additional time is necessary, to act on the notice. An extension may be granted by the commanding officer upon a timely showing of good cause by the officer.

b. If the respondent fails to acknowledge receipt of notification or submit a timely reply, that fact shall constitute a waiver of rights and an appropriate notation shall be recorded on a retained copy of the appropriate form.

c. If the respondent declines to respond as to the selection of rights, such declination shall constitute a waiver of rights and an appropriate notation will be made in the case file. If the respondent indicates that one or more of the rights will be exercised, but declines to sign the appropriate notification statement, the selection of rights will be noted and notation as to the failure to sign will be made.

5. Submission to the Secretary

a. The commanding officer shall forward the case file to the Secretary via CHNAVPERS or DC/S (M&RA), as appropriate. The case file shall contain a copy of the written notification to the respondent, documentation substantiating the conduct or performance, and any written statement which the respondent desires to make. If the respondent tenders a resignation, it shall accompany the case file.

b. CHNAVPERS or DC/S (M&RA) shall forward the case file to the Secretary with recommendations on each reason for separation

and the facts supporting it, the recommendation for separation, and a recommendation for acceptance or rejection of a resignation, if one is tendered.

c. CHNAVPERS or DC/S (M&RA) may disapprove the separation of probationary commissioned officers when the reasons for separation are solely in the category of Substandard Performance of Duty (subparagraph 1a of enclosure (3)) and there is not sufficient evidence to support one or more of those reasons.

6. Action of the Secretary

a. The Secretary shall determine whether there is sufficient evidence supporting the allegations set forth in the notification for each of the reasons for separation.

b. If there is sufficient factual basis for separation, the Secretary may order the officer separated. If the officer tenders a resignation, the Secretary may accept or reject it.

c. If the Secretary determines that the recommended Honorable or General (Under Honorable Conditions) characterization of service is inappropriate, he may refer the case directly to a BOI.

d. The Secretary may retain the officer under the provisions of paragraph 7 of enclosure (4).